

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SWEET PEOPLE APPAREL, INC. CV 16-3139-RSWL-JPRx
dba MISS ME,)
)
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Plaintiff,)
)
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v.)
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)
CHANG GROUP LLC; KENCO)
FASHION INC.; XYZ COMPANIES)
1-10; and DOES 1-10,)
)
)
Defendants.)
)
)

**ORDER re Plaintiff's
Motion for Entry of
Default Judgment Against
Defendant Kenco Fashion
Inc. [75]**

Currently before the Court is Plaintiff Sweet People Apparel, Inc. dba Miss Me's ("Plaintiff") Motion for Entry of Default Judgment ("Motion" or "Motion for Entry of Default Judgment") as to the entire First Amended Complaint ("FAC") against Defendant Kenco Fashion Inc. ("Defendant" or "Defendant Kenco") [75]. Having reviewed all papers submitted pertaining to this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** The

1 Court **GRANTS** Plaintiff's Motion and awards \$75,000 in
2 statutory damages against Defendant and \$5,115 in
3 attorneys' fees and costs, totaling \$80,115. The Court
4 also awards prejudgment interest on the judgment amount
5 of \$80,115, at the applicable rate under 28 U.S.C. §
6 1961(a). The Court **GRANTS** Plaintiff's request for
7 entry of a permanent injunction against Defendant.

8 I. BACKGROUND

9 A. Factual Background

10 Plaintiff is a California corporation with its
11 principal place of business in Los Angeles. First Am.
12 Compl. ("FAC") ¶ 6, ECF No. 15. Plaintiff manufactures
13 and sells high-quality jeanswear and denim products
14 under the "Miss Me" brand name. Id. at ¶ 10.
15 Plaintiff's "Miss Me" jeanswear is sold through its own
16 website and through major fashion retailers, both
17 online and in department stores. Id. Defendant is a
18 California corporation with its principal place of
19 business in the City of Industry. Id. at ¶ 8.

20 In 2011, Plaintiff created the JP5498B Design,
21 which it has used on the rear pockets of its jeanswear
22 products since at least July 23, 2012. Id. at ¶¶ 1,
23 12. On December 23, 2013, the United States Copyright
24 Office issued Plaintiff Copyright Registration No. VA
25 1-885-014 for the JP5498B Design. Id. at ¶ 11, Ex. A.

26 Plaintiff alleges that Defendant wilfully infringed
27 the JP5498B Design by creating and selling a
28 substantially similar design. Id. at ¶¶ 14, 20-21, 23;

1 compare FAC Ex. A, with FAC Ex. B. Defendant featured
2 the infringing design on its "AdiktD" brand jeanswear
3 products ("AdiktD design"). Id. at ¶ 16.

4 **B. Procedural Background**

5 Plaintiff filed its Complaint on May 6, 2016
6 against Defendant Chang Law Group LLC, alleging that
7 they willfully infringed the federally registered
8 copyright for its JP5498B Design pursuant to 17 U.S.C.
9 § 501(a). Compl. ¶ 1, ECF No. 1. On May 18, 2016,
10 Plaintiff filed its FAC, adding Defendant Kenco to the
11 suit and keeping the copyright infringement claim. FAC
12 ¶ 8. On May 27, 2016, Plaintiff served the Summons and
13 FAC on Defendant in the City of Industry. Decl. of
14 Matthew T. Salzmann ("Salzmann Decl.") Ex. B., ECF No.
15 75-1. On June 24, 2016, Defendant filed an Answer to
16 Plaintiff's FAC [20].

17 On December 12, 2016, the Court granted Counsel for
18 Defendant's Motion to Withdraw so long as Counsel
19 provided the Court with Defendant's last-known address.
20 Order re: Mot. for Leave to Withdraw as Counsel
21 ("December 12 Order"), 6:24-7:4, ECF No. 60. Counsel
22 filed a Proof of Service that it mailed the December 12
23 Order to Defendant at its City of Industry address on
24 December 20, 2016 [61]. On December 22, 2016, the
25 Court ordered Defendant to obtain new counsel within
26 thirty (30) days after being served with the Order
27 [63]. The Court warned Defendant that, as a
28 corporation, it could not appear *pro se* in the

1 litigation pursuant to Central District Local Rule 83-
2 2.3.4. Order re: Motion for Leave to Withdraw As
3 Counsel ("December 22 Order"), 1:26-2:3, ECF No. 63.
4 The Court further advised Defendant that failure to
5 timely obtain counsel would "result in the striking of
6 Defendant's answer and entry of default against
7 Defendant." Id. at 2:1-3.

8 Plaintiff's counsel mailed the December 22 Order to
9 Defendant's last-known address on January 9, 2017.
10 Decl. of Eric D. Mason ("Mason Decl.") Ex. C, ECF No.
11 68-1. Defendant failed to timely obtain counsel
12 pursuant to the Court's December 22 Order. As such, on
13 February 14, 2017, Plaintiff requested the Clerk to
14 enter default against Defendant and moved to strike
15 Defendant's Answer [68]. On March 16, 2017, the Court
16 granted Plaintiff's Motion to Strike and entered
17 default against Defendant on March 22, 2017 [71, 72].

18 Defendant Chang Law Group LLC was dismissed from
19 the action on March 31, 2017 [74], and Defendant Kenco
20 was the only remaining defendant. Plaintiff filed its
21 Motion for Default Judgment on the same day [75]. No
22 Opposition was filed. Plaintiff's counsel mailed the
23 Motion to Defendant, mot. 15:16-18, but the mail was
24 returned on April 5, 2017 [76].

25 Plaintiff currently seeks the following relief: (1)
26 a permanent injunction enjoining Defendant from
27 continuing to infringe Plaintiff's JP5498B Design; (2)
28 an award of statutory damages in the amount of \$75,000

1 for willful copyright infringement pursuant to 17
2 U.S.C. § 504(c); (3) attorneys' fees and costs totaling
3 \$5,115; and (4) an award for prejudgment interest
4 pursuant to 28 U.S.C. § 1961(a). Mot. 3:4-10.

5 **II. DISCUSSION**

6 **A. Legal Standard**

7 The granting of default judgment is within the
8 discretion of the district court. Aldabe v. Aldabe,
9 616 F.2d 1089, 1092 (9th Cir. 1980); see Fed. R. Civ.
10 P. 55. Procedural and substantive requirements must be
11 satisfied.

12 Procedurally, the requirements set forth in Federal
13 Rules of Civil Procedure 54(c) and 55(b), and Local
14 Rule 55-1 must be met. See Vogel v. Rite Aid Corp.,
15 992 F. Supp. 2d 998, 1006 (C.D. Cal 2014). Local Rule
16 55-1 provides: "When an application is made to the
17 Court for a default judgment, the application shall be
18 accompanied by a declaration in compliance with
19 F.R.Civ.P. 55(b)(1) and/or (2) and include the
20 following: (a) When and against what party the default
21 was entered; (b) The identification of the pleading to
22 which default was entered; (c) Whether the defaulting
23 party is an infant or incompetent person, and if so,
24 whether that person is represented by a general
25 guardian, committee, conservator or other
26 representative; (d) That the Service Members Civil
27 Relief Act, 50 U.S.C. App. § 521, does not apply; and
28 (e) That notice has been served on the defaulting

1 party, if required by F.R.Civ.P. 55(b)(2)." L.R. 55-1.

2 Courts should also consider the following factors
3 in determining whether to grant a motion for default
4 judgment: "(1) the possibility of prejudice to
5 plaintiff, (2) the merits of plaintiff's substantive
6 claims, (3) the sufficiency of the complaint, (4) the
7 sum of money at stake in the action, (5) the
8 possibility of a dispute concerning the material facts,
9 (6) whether defendant's default was the product of
10 excusable neglect, and (7) the strong public policy
11 favoring decisions on the merits." Eitel v. McCool,
12 782 F.2d 1470, 1471-72 (9th Cir. 1986).

13 If the court determines that the defendant is in
14 default, "'the factual allegations of the complaint,
15 other than those relating to damages, are taken as
16 true.'" Televideo Sys., Inc. v. Heidenthal, 826 F.2d
17 915, 917-18 (9th Cir. 1987) (quoting Geddes v. United
18 Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977)).

19 Additionally, "[w]hen entry of judgment is sought
20 against a party who has failed to plead or otherwise
21 defend, a district court has an affirmative duty to
22 look into its jurisdiction over both the subject matter
23 and the parties." In re Tuli, 172 F.3d 707, 712 (9th
24 Cir. 1999).

25 If the Court determines that the allegations in the
26 complaint are sufficient to establish liability, the
27 plaintiff must provide proof of all damages sought in
28 the complaint, and the Court must determine the "amount

1 and character" of the relief that should be awarded.
2 Vogel, 992 F. Supp. 2d at 1005-06 (citations omitted).
3 "A default judgment must not differ in kind from, or
4 exceed in amount, what is demanded in the pleadings."
5 Fed. R. Civ. P. 54(c).

6 **B. Analysis**

7 1. Jurisdiction and Service of Process

8 In considering whether to enter default judgment
9 against Defendant, the Court must first determine
10 whether it has jurisdiction over the subject matter and
11 the parties to the case. In re Tuli, 172 F.3d at 712.

12 a. *Subject Matter Jurisdiction and Personal*
13 *Jurisdiction are Proper*

14 The Court has subject matter jurisdiction over this
15 action. Plaintiff's claim for copyright infringement
16 arises under the Copyright Act of 1976, 17 U.S.C. § 101
17 et seq. District courts have original jurisdiction of
18 any civil action "arising under any Act of Congress
19 relating to . . . copyrights." 28 U.S.C. § 1338(a).
20 Therefore, the Court has federal question jurisdiction
21 over this claim under 28 U.S.C. §§ 1331, 1338(a).

22 Personal jurisdiction is also satisfied. Defendant
23 is a California corporation with its principle place of
24 business in the City of Industry, California. FAC ¶ 8.
25 Moreover, specific jurisdiction is demonstrated from
26 the face of the FAC, as Plaintiff alleges that the
27 copyright infringement giving rise to this action took
28 place in this forum. See id. at ¶ 5.

1 b. *Service of Process is Proper*

2 Service of process is met because Plaintiff served
3 Defendant with the Summons and FAC on May 27, 2016, as
4 evidenced by the Proof of Service. Salzmann Decl. Ex.
5 B. Plaintiff served the Summons and FAC by substitute
6 service on Defendant's alleged manager, in compliance
7 with Federal Rule of Civil Procedure 4(h)(1)(B)¹ or
8 alternatively, Federal Rule of Civil Procedure 4(e)(1)
9 and California Code of Civil Procedure § 416.10.²

10 2. Procedural Requirements

11 Plaintiff has satisfied the procedural requirements
12 for default judgment pursuant to Federal Rule of Civil
13 Procedure 55 and Central District Local Rule 55-1.

14 Under Federal Rule of Civil Procedure 55(a), the
15 Clerk properly entered default against Defendant on
16 March 22, 2017 [72]. Plaintiff moved pursuant to Rule
17 55(b) for entry of default judgment on March 31, 2017
18 [75].

19 Local Rule 55-1 sets forth additional requirements
20 in an application for default judgment: (1) when and
21 _____

22 ¹ A corporation can be served by "delivering a copy of the
23 summons and of the complaint to an officer, a managing or general
24 agent, or any other agent authorized by appointment or by law to
25 receive service of process and—if the agent is one authorized by
statute and the statute so requires—by also mailing a copy of
each to the defendant."

26 ² A corporation may be served through a method outlined in
27 Rule 4(e)(1), which includes relevant state law methods for
28 service of process. See Fed. R. Civ. P. 4(h)(1)(A). California
Code of Civil Procedure § 416.10(b) allows corporations to be
served through a general manager, as was accomplished here.

1 against what party the default was entered; (2) the
2 identification of the pleading to which default was
3 entered; (3) whether the defaulting party is an infant
4 or incompetent person; (4) that the Servicemembers
5 Civil Relief Act does not apply; and (5) notice has
6 been served on the defaulting party.

7 Plaintiff has satisfied each of these requirements.
8 The Court Clerk entered default judgment against
9 Defendant as to the entire FAC on March 22, 2017 [72].
10 Ntc. of Mot. for Default J. 1:6-8; Salzmann Decl. ¶ 5.
11 Defendant is neither a minor, nor an incompetent person
12 nor in the military service or otherwise exempted under
13 the Soldier's and Sailor's Civil Relief Act of 1940,
14 the predecessor to the Servicemembers Civil Relief Act.
15 Salzmann Decl. ¶ 6. Finally, Defendant was served with
16 notice of this Motion on March 31, 2017. Mot. 15:3-14.

17 3. Eitel Factors

18 In support of its Motion, Plaintiff has
19 sufficiently set forth "(1) the possibility of
20 prejudice to the plaintiff; (2) the merits of
21 plaintiff's substantive claims; (3) the sufficiency of
22 the complaint; (4) the sum of money at stake in the
23 action; (5) the possibility of a dispute concerning the
24 material facts; (6) whether the default was due to
25 excusable neglect; and (7) the strong public policy
26 underlying the Federal Rules of Civil Procedure
27 favoring decisions on the merits." Eitel, 782 F.2d at
28 1471-72.

1 a. *Risk of Prejudice to Plaintiff*

2 The first Eitel factor considers whether a
3 plaintiff will suffer prejudice if a default judgment
4 is not entered. Vogel, 992 F. Supp. 2d at 1007.
5 Plaintiff argues that it would suffer prejudice without
6 default judgment because it will be denied a remedy
7 until Defendant participates in this action. Mot.
8 6:13-14. Given Defendant's failure to secure
9 counsel—in spite of the Court's repeated requests to do
10 so—and to defend this suit, it is unlikely that
11 Defendant will right its behavior, thus denying
12 Plaintiff the chance to resolve its claims and leaving
13 Plaintiff without a recourse for recovery. Elektra
14 Entm't Grp. Inc. v. Crawford, 226 F.R.D. 388, 392 (C.D.
15 Cal. 2005). This factor weighs towards entering
16 default.

17 b. *Sufficiency of the Complaint and*
18 *Likelihood of Success on the Merits*

19 The second and third Eitel factors consider the
20 merits of the plaintiff's substantive claims and the
21 sufficiency of the complaint. "Under an [Eitel]
22 analysis, [these factors] are often analyzed together."
23 Dr. JKL Ltd. v. HPC IT Educ. Ctr., 749 F. Supp.2d 1038,
24 1048 (N.D. Cal. 2010). Plaintiff has asserted a
25 meritorious claim for willful infringement of its
26 copyright in the JP5498B Design.

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28 ///

1 i. *Plaintiff has Sufficiently Pled a*
2 *Copyright Infringement Claim*

3 To plead a viable copyright infringement claim
4 pursuant to 17 U.S.C. § 501, Plaintiff must establish
5 "(1) ownership of a valid copyright, and (2) copying of
6 the constituent elements of the work that are
7 original." Feist Publ'ns., Inc. v. Rural Tel. Serv.
8 Co., 499 U.S. 340, 361 (1991). Absent direct evidence
9 of copying, the second prong is satisfied by showing
10 that "the infringer had access to the work and that the
11 two works are substantially similar." Shaw v.
12 Lindheim, 919 F.2d 1353, 1356 (9th Cir. 1990).
13 Plaintiff alleges a meritorious copyright infringement
14 claim.

15 First, Plaintiff owns a validly registered
16 copyright in the JP5498B Design. The copyright,
17 Registration No. VA 1-885-014, was issued on December
18 23, 2013. FAC ¶ 11. Moreover, the certificate of
19 registration was made within five years after the
20 JP5498B Design's first publication in at least 2011 or
21 2012, which "constitute[s] prima facie evidence of the
22 validity of the copyright" See FAC ¶¶ 11-12;
23 17 U.S.C. § 410(c). Plaintiff attaches a copy of the
24 registration certificate to the FAC. FAC Ex. A. Thus,
25 the first prong is satisfied.

26 Second, Defendant copied original elements of
27 Plaintiff's JP5498B Design. Although Plaintiff lacks
28 express, direct evidence of Defendant's copying,

1 Defendant likely had access to Plaintiff's work, as it
2 was "widely disseminated:" since using the JP5498B
3 Design as early as July 2012, Plaintiff has distributed
4 its jeanswear through major fashion retailers and
5 department stores, both in-store and online. FAC ¶ 10;
6 see Int'l Diamond Imps., Inc. v. Oriental Gemco, Inc.,
7 64 F. Supp. 3d 494, 521 (S.D.N.Y. 2014)(copying
8 sufficiently pled where defendants had a reasonable
9 possibility of seeing plaintiff's widely-disseminated
10 jewelry in department stores and trade shows). And
11 both parties operate in the same fashion industry, as
12 they both have principal places of business in Los
13 Angeles. FAC ¶¶ 6, 8. One could reasonably infer that
14 Defendant would have had an opportunity to see and copy
15 Plaintiff's design while competing in the Los Angeles-
16 area jeanswear industry. See L.A. Printex Indus., Inc.
17 v. Aeropostale, Inc., 676 F.3d 841, 848 (9th Cir.
18 2012)(geographic proximity of industry competitors in
19 Los Angeles and fact that alleged infringement occurred
20 shortly after dissemination of plaintiff's design
21 suggested "access").

22 The two designs' substantial similarity also shows
23 copying. "Even without proof of access, a plaintiff
24 can still prove copying if he can show that the two
25 works are not only substantially similar, but are so
26 strikingly similar as to preclude the possibility of
27 independent creation." Meta-Film Ass'n, Inc. v. MCA,
28 Inc., 586 F. Supp. 1346, 1355 (C.D. Cal. 1984). The

1 Ninth Circuit employs a two-part test for determining
2 whether one work is substantially similar to another:

3 [A plaintiff] must prove both substantial
4 similarity under the "extrinsic test" and
5 substantial similarity under the "intrinsic
6 test." The "extrinsic test" is an objective
7 comparison of specific expressive elements. The
8 "intrinsic test" is a subjective comparison that
9 focuses on whether the ordinary, reasonable
10 audience would find the works substantially
11 similar in the total concept and feel of the
12 works.

13 Antonick v. Elec. Arts, Inc., 841 F.3d 1062, 1065-66 (9th
14 Cir. 2016)(citation omitted). Plaintiff proffers a side-
15 by-side comparison of its JP5498B Design and the
16 allegedly infringing AdiktD design.



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20 FAC ¶ 15; Mot. 1:16-23. The comparison passes the
21 extrinsic test, as Plaintiff's JP5498B Design and
22 Defendant's AdiktD design include similar artistic
23 expressions that are protectable. Apple Computer, Inc.
24 v. Microsoft Corp., 35 F.3d 1435, 1442 (9th Cir. 1994).
25 For instance, both are located on the denim jeans' rear
26 pocket; both have rhinestone-embellished flowers in the
27 pocket's upper right-hand corner; and both use the same
28 sweeping feather design below the fleur-de-lis sign in

1 the lower left-hand corner. See FAC ¶ 15; Mot. 1:16-
2 23. The intrinsic test is also satisfied. Comparing
3 the "total concept and feel" of the two designs, a
4 reasonable viewer would be struck by their substantial
5 similarity. See Columbia Pics. Indus., Inc. v. Miramax
6 Films Corp., 11 F. Supp. 2d 1179, 1185 (C.D. Cal. 1998)
7 (citing Litchfield v. Spielberg, 736 F.2d 1352, 1356
8 (9th Cir. 1984)). Because valid copyright ownership
9 and copying have been demonstrated, Plaintiff has
10 asserted a meritorious claim for copyright
11 infringement.

12 c. *The Sum of Money at Stake*

13 "Under the [fourth] Eitel factor, the court must
14 consider the amount of money at stake in relation to
15 the seriousness of Defendant's conduct." PepsiCo, 238
16 F. Supp. 2d at 1176. "While the allegations in a
17 complaint are taken to be true for the purposes of
18 default judgment, courts must make specific findings of
19 fact in assessing damages." MoroccanOil, Inc. v.
20 Allstate Beauty Prod., Inc., 847 F. Supp. 2d 1197, 1202
21 (C.D. Cal. 2012). The Court will review declarations,
22 calculations, and other damages documentation to
23 determine whether the sum of money at stake is
24 appropriate. HICA Educ. Loan Corp. v. Warne, No. 11-
25 CV-04287-LHK, 2012 WL 1156402, at *3 (N.D. Cal. Apr. 6,
26 2012).

27 Plaintiffs seek (1) \$75,000 in statutory damages
28 for willful copyright infringement under 17 U.S.C. §

1 504(c); and (2) \$5,115 in attorneys' fees and costs.
2 Plaintiff argues that the sum of money at stake is not
3 disproportionately large, as it seeks statutory damages
4 well below the \$150,000 maximum in 17 U.S.C. § 504(c).
5 Mot. 9:14-17. The Court agrees. The Copyright Act
6 permits up to \$150,000 per willful infringement of a
7 copyright. 17 U.S.C. § 504(c)(2). Plaintiff's
8 requested damages are within the ambit of the statutory
9 sections and are reasonable when compared to damages
10 sought in other copyright infringement cases. Cf.
11 Starbucks Corp. v. Glass, No. 2:16-CV-03937-ODW(PJW),
12 2016 WL 6126255, at *6 (C.D. Cal. Oct. 20,
13 2016)(\$300,000 request for statutory damages was
14 appropriate because \$150,000 maximum applied to each
15 copyright infringed, and defendant infringed two);
16 China Cent. Television v. Create New Tech. (HK)
17 Limited, No. CV 15-01869 MMM (AJWx), 2015 WL 12732432,
18 at *14 (C.D. Cal. Dec. 7, 2015)(damages totaling
19 \$55,460,691 was proportionate to the harm defendants'
20 conduct caused). Considering that Plaintiff only seeks
21 discretionary awards for its attorneys' fees and costs
22 under 17 U.S.C. § 505 and reduced statutory damages,
23 entering default judgment is appropriate as to this
24 factor. See Elektra, 226 F.R.D. 388 at 393.

25 d. *The Possibility of a Dispute Concerning*
26 *the Material Facts*

27 The fifth Eitel factor examines the likelihood of a
28 dispute between the parties regarding the material

1 facts in the case. A defendant is "deemed to have
2 admitted all well-pleaded factual allegations" in the
3 Complaint upon entry of default. DirectTV, Inc. v. Hoa
4 Huynh, 503 F.3d 847, 851 (9th Cir. 2007).

5 This factor weighs in favor of granting this Motion
6 for Default Judgment. Plaintiff filed a well-pleaded
7 FAC alleging the facts necessary to establish its
8 willful copyright infringement claim. After the Court
9 struck Defendant's Answer for its failure to timely
10 obtain counsel, the Clerk entered default against
11 Defendant, Defendant has failed to appear in its own
12 defense, and the Court thus accepts the material facts
13 in the FAC as true. See Live Face on Web, LLC v. AZ
14 Metroway, Inc., No. 5:15-cv-01701-CAS(KKx), 2016 WL
15 4402796, at *4 (C.D. Cal. Aug. 15, 2016)(no excusable
16 neglect where defendant failed to set aside its default
17 or defend the lawsuit after the court struck the answer
18 for failure to attend court-ordered hearings). Even
19 turning to the substantive facts, a dispute over the
20 copyright infringement claim is unlikely, considering
21 the substantial similarities between the JP5498B Design
22 and the AdiktD design and the widespread dissemination
23 of Plaintiff's JP5498B Design. See supra Part
24 II.B.3.b.

25 e. *The Possibility of Excusable Neglect*

26 Excusable neglect takes into account factors like
27 "prejudice . . . , the length of the delay and its
28 potential impact on judicial proceedings, the reason

1 for the delay, including whether it was within the
2 reasonable control of the movant, and whether the
3 movant acted in good faith." J.L. v. Moreno Valley
4 Unified Sch. Dist., No. CV 09-1978 ODW (PJWx), 2010 WL
5 1708839, at *1 (C.D. Cal. Apr. 20, 2010)(internal
6 quotation marks and citations omitted).

7 The possibility of excusable neglect is remote
8 here, as Defendant was properly served with the
9 summons, FAC, and instant Motion, indicating that it
10 had proper notice of the action. Salzmann Decl. ¶ 3,
11 Ex. B; see Shanghai Auto. Instrument Co. v. Kuei, 194
12 F. Supp. 2d 995, 1005 (N.D. Cal. 2001)(finding no
13 excusable neglect because defendants were properly
14 served with the FAC, notice of entry of default, and
15 papers in support of motion for default judgment).
16 Moreover, Defendant has made no attempt to appear or
17 otherwise defend itself in this action, let alone
18 advance a reason for its failure to respond to the
19 Court's orders and to various motions since its prior
20 counsel was relieved in December 2016. This factor
21 weighs in favor of granting default judgment.

22 f. *Policy Favoring a Decision on the Merits*

23 The Ninth Circuit has stated that "[c]ases should
24 be decided upon their merits whenever reasonably
25 possible." Eitel, 782 F.2d at 1472. However, "this
26 preference, standing alone, is not dispositive."
27 PepsiCo, 238 F. Supp. 2d at 1177. In deciding to grant
28 default judgment, the court in PepsiCo noted:

1 "Defendant's failure to answer the Complaint makes a
2 decision on the merits impractical, if not impossible."
3 Id. Here, the substantive copyright infringement claim
4 cannot be adjudicated, as the Court struck Defendant's
5 Answer and Defendant failed to respond. Thus, the
6 seventh factor does not preclude entry of default
7 judgment. Accordingly, because all Eitel factors weigh
8 in favor of entering default judgment, the Court **GRANTS**
9 Plaintiff's Motion as to the sole claim for copyright
10 infringement.

11 4. Character and Amount of Plaintiff's Recovery

12 Plaintiff requests statutory damages under 17
13 U.S.C. § 502 totaling \$75,000, a permanent injunction
14 to stop Defendant from infringing its JP5498B Design,
15 costs and attorneys' fees totaling \$5,115, and
16 prejudgment interest pursuant to 28 U.S.C. § 1961(a).
17 Mot. 3:4-10. The Court takes up the validity of each
18 request in turn.

19 a. *Injunctive Relief*

20 Plaintiff seeks a permanent injunction enjoining
21 Defendant from continued infringement of its JP5498B
22 Design. Mot. 3:6-7. Pursuant to section 502 of the
23 Copyright Act, courts may grant permanent injunctive
24 relief, where reasonably appropriate, to prevent
25 copyright infringement. 17 U.S.C. § 502(a). To
26 receive a permanent injunction, Plaintiff must show
27 "(1) that it has suffered an irreparable injury; (2)
28 that remedies available at law, such as monetary

1 damages, are inadequate to compensate for that injury;
2 (3) that, considering the balance of hardships between
3 the plaintiff and defendant, a remedy in equity is
4 warranted; and (4) that the public interest would not
5 be disserved by a permanent injunction." Ebay Inc. v.
6 MercExchange, L.L.C., 547 U.S. 388, 391 (2006).

7 The balance of factors favors granting Plaintiff's
8 request for a permanent injunction. First, Plaintiff
9 has suffered an irreparable injury in the form of lost
10 profits and reputation because Defendant has positioned
11 itself as a direct competitor in the jeanswear market.
12 See FAC ¶¶ 17, 24. Second, Defendant's failure to
13 appear in and defend this lawsuit and its repeated
14 disobedience of the Court's orders suggest Defendant is
15 likely to repeat its infringement; thus, injunctive
16 relief is preferable to compensatory damages in
17 deterring Defendant's behavior. Courts have determined
18 that permanent injunctions, as opposed to monetary
19 damages, best remedy a defendant's repeated future
20 copyright infringement activity. See Mai Sys. Corp. v.
21 Peak Comp., Inc., 991 F.2d 511, 520 (9th Cir. 1993);
22 see also Jackson v. Sturkie, 255 F. Supp. 2d 1096, 1103
23 (N.D. Cal. 2003)(finding injunctive relief was
24 appropriate because of "defendant's past behavior and
25 on-going ability to infringe plaintiff's copyright . .
26 . ."). Third, the balance of hardships tips in favor
27 of Plaintiff. Were the Court to grant the injunction,
28 Plaintiff would be protected from Defendant's continued

1 infringement of its JP5498B Design, and harm to
2 Defendant would be minimal, as Defendant would be
3 "prevented only from unlawfully reproducing and
4 distributing works protected by [Plaintiff's]
5 copyright." Star Fabrics, Inc. v. Zappos Retail, Inc.,
6 NO. CV 13-00229 MMM (MRWx), 2013 WL 12123687, at *9
7 (C.D. Cal. Sept. 10, 2013). Fourth, injunctive relief
8 would serve the public interest, as it would shield
9 Plaintiff's JP5498B Design from repeated copyright
10 infringement. Warner Bros. Entm't Inc. v. WTV Sys.,
11 Inc., 824 F. Supp. 2d 1003, 1015 (C.D. Cal. 2011)("it
12 is virtually axiomatic that the public interest can
13 only be served by upholding copyright protections . . .
14 .")(citation omitted).

15 b. *Statutory Damages*

16 Plaintiff also seeks \$75,000 in statutory damages
17 for Defendant's willful infringement. Mot. 3:4-5.
18 Upon entry of default judgment under Federal Rule of
19 Civil Procedure 55, granting damages is within the
20 "wide latitude" of the district court's discretion.
21 James v. Frame (In re Frame), 6 F.3d 307, 310 (9th Cir.
22 1993). 17 U.S.C. § 504 provides, in relevant part: "an
23 infringer of copyright is liable for either - (1) the
24 copyright owner's actual damages and any additional
25 profits of the infringer . . . or (2) statutory
26 damages." 17 U.S.C. § 504(a). "In a case where the
27 copyright owner sustains the burden of proving, and the
28 court finds, that infringement was committed willfully,

1 the court in its discretion may increase the award of
2 statutory damages to a sum of not more than \$150,000."
3 17 U.S.C. § 504(c)(2). In exercising its discretion,
4 "the court can consider such factors as the expenses
5 saved and profits reaped by the infringer, the
6 deterrent effect of the award on defendant and on third
7 parties, and the infringer's state of mind in
8 committing the infringement." Sanrio, Inc. v. Torres,
9 No. CV 14-03736 MMM (JCx), 2015 WL 12661916, at *8
10 (C.D. Cal. Jan. 5, 2015).

11 Plaintiff seeks \$75,000, half the maximum amount
12 permitted under 17 U.S.C. § 504(c). Plaintiff makes no
13 allegations in its FAC regarding the expenses Defendant
14 saved or the profits Defendant earned using Plaintiff's
15 JP5498B Design. But Defendant's failure to participate
16 in this action "mak[es] it impossible for Plaintiff to
17 ascertain an exact accounting on profits made or
18 revenues lost." BWP Media USA, Inc. v. P3R, LLC, No.
19 2:13-CV-05315 SVW, 2014 WL 3191160, at *4 (C.D. Cal.
20 July 3, 2014). Nevertheless, Plaintiff has
21 demonstrated that the requested \$75,000 is appropriate.
22 Upon default, the factual allegations of the complaint,
23 except those relating to the amount of damages, will be
24 taken as true. See TeleVideo Systems, 826 F.2d 915,
25 917 (9th Cir. 1987). Accordingly, on a motion for
26 default judgment, courts have presumed that allegations
27 of willfulness are true, and have awarded statutory
28 damages based on willful copyright infringement. Aries

1 Music Entm't, Inc. v. Angelica's Record Distrib., Inc.,
2 506 F. App'x 550, 552 (9th Cir. 2013). In the FAC,
3 Plaintiff alleged that Defendant willfully infringed
4 and continued to willfully infringe Plaintiff's
5 copyright in the JP5498B Design. FAC ¶ 21. Moreover,
6 by defaulting in this action, Defendant has further
7 emphasized its willful behavior. Thus, the Court
8 awards the requested \$75,000 in statutory damages.

9 *c. Attorneys' Fees & Litigation Costs*

10 Plaintiff seeks \$5,115 in combined attorneys' fees
11 and costs. Mot. 3:8-9. The Court, in its discretion,
12 may award costs and reasonable attorneys' fees to the
13 prevailing party, pursuant to section 505 of the
14 Copyright Act. 17 U.S.C. § 505. Central District
15 Local Rule 55-3 provides a schedule of attorneys' fees
16 applicable to a default judgment in the event that an
17 applicable statute provides for the recovery of
18 attorneys' fees; as previously mentioned, 17 U.S.C. §
19 505 of the Copyright Act allows for attorneys' fees.
20 For a judgment between \$50,000.01 and
21 \$100,000.00—applicable here, as Plaintiff seeks \$75,000
22 in statutory damages—attorneys' fees are \$3,600 plus 4%
23 of any amount over \$50,000. Plaintiff appropriately
24 seeks \$4,600, which results from adding four percent of
25 \$25,000, the judgment over \$50,000, to \$3,600. See
26 L.R. 55-3.

27 Plaintiff also seeks \$515 in litigation costs.
28 These costs were incurred in bringing this action, and

1 include the \$400 Complaint filing fee pursuant to the
2 Central District Schedule of Fees, and \$115 in expenses
3 for serving Defendant with the FAC. Salzmann Decl. ¶
4 7. These costs are appropriate.

5 d. *Prejudgment Interest*

6 Plaintiff lastly seeks prejudgment interest on the
7 entire judgment under 28 U.S.C. § 1961(a), which allows
8 for postjudgment interest.³ The Court has discretion in
9 awarding prejudgment interest pursuant to the Copyright
10 Act. Polar Bear Prods., Inc. v. Timex Corp., 384 F.3d
11 700, 716 & n.2. Prejudgment interest compensates a
12 copyright owner for its misappropriated property and to
13 deter unjust enrichment. Id. at 718. The Ninth
14 Circuit has indicated that section 1961(a) provides the
15 applicable rate of prejudgment interest in a copyright
16 infringement action. See Frank Music Corp. v. Metro-
17 Goldwyn-Mayer Inc., 886 F.2d 1545, 1552 (9th Cir.
18 2004). Under section 1961(a), the interest rate is
19 calculated "at a rate equal to the weekly average
20 1-year constant maturity Treasury yield, as published
21 by the Board of Governors of the Federal Reserve
22 System, for the calendar week preceding." The Court
23 thus permits prejudgment interest at the statutory rate

24
25 ³ In the requested relief in the FAC, Plaintiff sought
26 prejudgment and postjudgment interest on any monetary award
27 against Defendant. FAC ¶ 6. Federal Rule of Civil Procedure
28 54(c) provides: "[a] default judgment must not differ in kind
from, or exceed in amount, what is demanded in the pleadings."
The Court confines itself to whether Plaintiff should receive
prejudgment interest, the requested relief in the pleadings.

1 specified by 28 U.S.C. § 1961(a) on the judgment amount
2 of \$80,115.

3 **III. CONCLUSION**

4 Based on the foregoing, the Court **GRANTS**
5 Plaintiff's Motion for Default Judgment [75] against
6 Defendant Kenco for the sole claim of copyright
7 infringement under 17 U.S.C. § 501. The Court awards
8 \$80,115 in damages: \$75,000 in statutory damages under
9 17 U.S.C. § 504(c) and \$5,115 in attorneys' fees and
10 costs pursuant to 17 U.S.C. § 505 and Local Rule 55-3.
11 The Court also awards prejudgment interest on the total
12 \$80,115 award at the applicable rate from 28 U.S.C. §
13 1961(a). Lastly, the Court enjoins Defendant from
14 further infringement of Plaintiff's JP5498B Design.

15 **IT IS SO ORDERED.**

16
17 DATED: June 6, 2017

s/ RONALD S.W. LEW

18 **HONORABLE RONALD S.W. LEW**
19 Senior U.S. District Judge
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